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TWO LECTURES

ON THE

CONSTITUTION OF THE UNITED STATES

CONCLUDING A COURSE ON

THE MODERN STATE,

DELIVERED IN THE

LAW SCHOOL OF COLUMBIA COLLEGE, DURING THE WINTER OF 1860 AND 1861,

TO WHICH IS APPENDED

AN ADDRESS ON SECESSION

WRITTEN IN THE YEAR 1851.

BY

FRANCIS LIEBER, LL. D.

CORRESPONDING MEMBER OF THE INSTITUTE OF FRANCE; AUTHOR OF "CIVIL LIBERTY AND SELF-GOVERNMENT," &c., &c.

NULLI ME MANCIPAVI.

NEW YORK:
PRINTED BY DIRECTION OF THE BOARD OF TRUSTEES.
1861.

WHAT IS OUR CONSTITUTION, — LEAGUE, PACT, OR GOVERNMENT?

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ADVERTISEMENT.

The author of these Lectures, emboldened by a friendship which he esteems a high honor, laid the manuscript before the Hon. Horace Binney, with a request that he would make such annotations as might appear necessary. The opinions of the senior member of the American Bar, and of so profound, philsophical, and elevated a jurist, must needs enhance the value of any discourse on the American Constitution. When, therefore, the manuscript was returned, the author could not allow himself to withhold from his readers Mr. Binney's notes, although they were strictly intended as memoranda for himself alone. He obtained permission, not indeed without repeated entreaty, to publish these along with the Lectures—a liberality for which he wishes to express his grateful and affectionate acknowledgment. Apex autem senectutis tanta auctoritas.

New-York, March, 1861.

FIRST LECTURE.

Having classified the constitutions of modern states, and discussed the characteristic features of the most prominent European fundamental laws, we now approach the question: What is the Constitution of the United States? Do the States form a league? Or is the Constitution a pact, a contract—a political partnership of contracting parties? Do we live in a confederacy? and if so, in a confederacy of what degree of unitedness? Or is the Constitution a framework of government for a united country—a political organism of a people, with its own vitality and self-sufficing energy? Do we form a union, or an aggregate of partners at pleasure?

These are momentous questions—not only interesting in an historical or scientific point of view, but important as questions of political life and social existence, of public conscience, of right and truth in the highest spheres of human action and of our civilization. At no time has the very character and essence of our Constitution been so much discussed as in ours. Never before have measures of such importance been so made to depend, in appearance, upon the fundamental character of the document called the Constitution of the United States, while never before have those in high authority attended less to its genesis, its contents, and its various provisions, in order to justify actions affecting our entire polity. Never before, either in our own, or in the history of our race, have whole communities seemed to make acts of elementary and national consequence depend upon a single term; upon the question whether the Constitution is a mere contract, or whether the word, derived as it is from *constituere*, must be understood in the sense in which Cicero takes it, when he speaks of *constituere rempublicam*—that is, organizing the common weal, putting it in

order and connecting all the parts in mutual organic dependence upon one another.[1]

I have used the words *apparently* and *seemingly*, because it admits of little doubt, if of any, that those among the leaders in the present disturbances who make a world of consequences depend upon the solitary question, Is or is not the Constitution of the United States a contract? argue on a foregone conclusion. Or is there a man living who believes that they would give up their pursuit of disunion, if it would be proved, by evidence ever so fair, substantial, and free from embittering passion, that the Constitution is not a compact, or is not a mere contract?

The difference between the attenuated logic of special pleading, drawn like wire through the draw-plate of technical terms, in order to make out a case, on the one hand, and a comprehensive search after truth and loyal adhesion to it when found, becomes more distinct and more important as the sphere of action is more extended or the region of argument higher. It is a rule of fallacy—and fallacy has its rules, too—to seize upon one point, one term, to narrow down the meaning even of this one point, and then keenly to syllogize from that single starting point, irrespective of all other modifying and tributary truths or considerations. Wherever you find it, be at once on your guard—whether the discussion relates to religion, philosophy, to law, politics, or economy, to science, or to interpreting a document, a treaty of nations, or the last will of an individual. The search after truth may be symbolized by the soaring eagle rising to the regions of light in order to view things from above, and not by the perforating gimlet, which alone would be no useful tool.

You have probably seen, in the papers of this week, a letter written by a former Senator from Louisiana, in which he accepts the nomination for the convention of his State, which is to decide whether his State shall secede from the Union. This gentleman states that, in order to enable the people to

[1] The reader will keep in mind, through the perusal of these lectures, that they were delivered in the beginning of the month of January, 1861—that year, which the European will call the Italian Year, and which our historian may have to call the Sad Year.

vote for or against him understandingly, it is necessary that his views and convictions should be distinctly known. He is for secession, and the course of his argument is this—I state it with punctilious correctness:—

The Constitution of the United States is a contract.

Mr. Webster says a contract broken at one end is broken all over.

The Constitution of the United States has been broken.

Therefore, the contract is broken all to pieces, and is at an end.

Therefore, each component part of the former United States stands for itself. (He does not say, where it stood before the adoption of the Constitution, for he speaks of Louisiana.)

Therefore, each portion, thus floating for itself, can do what seems best to itself—become a separate empire, join a new confederacy, or become again (I suppose) a French dependency, or else a starting point for a new government throwing its seine over Mexico.

Now, this argument contains almost as many fallacies as it contains positions, which it will be appropriate briefly to exhibit.

Suppose, for argument's sake, that the Constitution is a contract, the important questions remain, What sort of contract?—for every lawyer knows full well that there are many different species of contracts,—and, Is it a mere contract? Almost all former publicists of note and weight (not to speak of such as Filmer) have considered, and very many of the present day continue to consider, all government to be founded upon an original pact or contract, as I have amply shown you in preceding lectures.[1] This supposed social contract was formed for the common welfare of all, and every bad law is doubtless an infringement of the contract, but has any publicist mentioned that thereby each contracting member is authorized to become a *fuor-uscito*, whom I have described to you? On the contrary, all publicists have maintained that the government contract is made in perpetuity. If I am asked, Where is the his-

[1] Even Napoleon III. gave the name of compact to the so-called French Constitution, in his throne-speech of February, 1861.

torical proof that this government compact was made in perpetuity? I answer, Nowhere; nor is there a historical proof of the original contract, altogether. Those who founded their theory of the origin of government on a supposed contract, were forced by the inherent nature of society to acknowledge the perpetuity of society, and to make it tally with their original contract. They felt, although they did not formulate, the truth that society is a *continuum*.

The laws of all European countries, and of those that have been peopled by Europeans, have called monogamic matrimony a contract. Asiatic law does not. When we call, however, wedlock a contract, we merely designate a certain aspect of this varied institution. Treat the relation of husband and wife, "for better and for worse," as a mere contract, and a common contract, and you will speedily and logically make out a special pleading for licentiousness, and end with what has been shamelessly called Free Love. Who would seriously pretend that he was expressing the whole character or indicating the chief meaning of matrimony,—with its preceding love and poetry, its exclusive and purifying affection, its school of unselfishness, its ordained procreation, and the founding of the family—that feeder of the State—its necessity, material and moral, for society, its sacred ties and indissolubleness, its religion and industrial power, its internal communism and external individuality, its venerable history and energic action,—simply by calling it a contract and nothing more?

Mr. Webster, we are continually told, has said that a contract broken at one end is broken all over. The great advocate made this statement when he spoke as counsel for his client. He overstated a certain truth; he was too great a lawyer not to know that this does not apply to all contracts; indeed, that it is applicable to a small class of contracts only. If this statement, —which represents contracts like Rupert's drops, shivered into countless fragments by the least crack at one end,—is to be applied literally to all contracts and agreements, it is easy to prove, by the same show of logic, that every short-coming of the fulfillment of a promissory oath amounts to perjury, which, nevertheless, the law of no country admits. Everything de-

pends upon what constitutes the breaking of the contract, and upon its nature. Or, wedlock being a contract, in which the wife promises to obey the husband, and the husband to love and honor his wife, is the whole contract irrecoverably broken "all over" by any act of disobedience on the part of the wife, or by the husband's ill-humor toward her?

Therefore—the argument goes on—the contract being broken, each contracting party stands for itself. Suppose, then, the original thirteen States were, at any time, sovereign nations, merely *leagued* together by the Constitution, forming an alliance and nothing more, such as Prussia, Austria, Russia, and Great Britain formed against France, at the beginning of the present century; and suppose, further, that the Rupert's drop has been broken by a single crack at the pointed end;—under all these suppositions they might be considered as having fallen to pieces and back into their original supposed miniature nationalities. But how can this apply to the State of the Senator to whom I have alluded, and to all those States which the United States as an entirety have formed of the common territory? If the glue of the badly-glued casket has given way, the component parts are what they were before they were pieced together, and Louisiana must be again a territory for sale. But, we are perhaps answered, Louisiana has become in the meantime a sovereign nation. We ask, how or when? If this argument be adopted, it would stand thus:—

Louisiana is a certain territory, whose people depend upon France—a power which has acquired the territory and government from Spain.

For reasons satisfactory to ourselves, the contracting parties of the Constitution break their contract, in order to acquire, as a totality, the territory from France. For, you are aware, that President Jefferson acknowledged that neither he nor any one had the constitutional power of purchasing foreign territory. But the mouth of the Mississippi was believed to be indispensable for the West, whose future greatness had been acknowledged by Washington,[1] and for the whole country. In England, Jefferson would have gone to Parliament and asked

[1] In the Farewell Address, among other papers.

for an act of indemnity, for having broken the law; our Constitution allows of no *ex post facto* laws, and all that could be done was to approve by silence; but certainly the Constitution was broken, and, therefore, broken "all over."

Under this broken contract the United States admit, in due time, Louisiana as a State,—that is, they made her a full participant in the Union, and leave to her the self-government[1] which is enjoyed by the States already existing; for, until the very moment of her being created a participating State, she was territory, no independent nation, enjoying no attribute of a sovereign nation whatever. Nay more, only a portion of that which had constituted in early times the colony, was erected into a State, the other portions going elsewhere.

Yet—so the Senator's letter says—the Constitution is broken once more,—twice, "all over,"—and Louisiana falls back on her original sovereignty, which, nevertheless, has never existed, but has been produced in a mysterious fashion not unlike the procreative commingling of two principles in Hindoo cosmogony, by the genetic embrace of two breaks of the Constitution "all over." The sovereignty is made by the Union, and then ante-dated to make it *original*, as sometimes commissions in the army are ante-dated to give the possessor a speedier chance of promotion.

There is, I think, no more substance in that argument, in favor of the lawfulness of secession, which is founded upon the idea of the Constitution being a mere contract, with the additional idea of Reserved Rights—implying, in this case, the reserved right of disregarding the contract and leaving the Constitution. This is the avowed and favorite argument of two most prominent statesmen, which will serve as an excuse for my mentioning one so unintelligibly void of meaning. What contract, even in the commonest spheres of life, can that be, the contracting parties of which reserve the right of not being ruled by it at all? The very idea of a contract, be it of whatever kind, is that of mutual binding for some common pur-

[1] I use the word self-government in the exact sense in which Mr. Jefferson used it, in a passage which I have quoted in the Civil Liberty and Self-Government.

pose, and how this element is expected to agree with an element of reserved right of mutual injury, we cannot see. Can there be such a thing as a reserved right of not doing at all what contracting parties agree to do?[1] And, let me add, if this theory of reserved right to break up the contract of government at any time be sound, and asserted in the spirit of truth, it logically follows that not only may a State leave the Union whenever it chooses, and do all sorts of things against the other States, but that, on the strength of reserved rights, each State may nullify any portion of the contract, and "resume" the power of coining money, of adopting a king, of sending ambassadors to foreign powers, of not considering the laws of the United States as the supreme laws of the land, and yet remain in the Union. There is nothing whatsoever in the argument on contract and reserved rights that makes it necessary to use secession in the bulk. Nullification was indeed founded upon the assertion of reserved sovereignty applied to a law—a portion of the government. We would thus logically arrive at the following graduation in our public law: Nullification; Partial Secession from, or resumption of the attributes of the general government; Temporary Secession; Permanent Secession. Whether a government would be much of a government, or a government at all, under such circumstances, is a question which the youngest among my hearers are perfectly competent to decide.

Let us dismiss these introductory discussions of that which the Constitution is not, and rather inquire into what it is—into its essential character, its genesis, and its substance. In doing so, I must, however, first remind you of certain truths which we

[1] *Note of Mr. Binney.*—All this is very sound.——Suppose the Constitution is a contract, or compact, or convention, &c., it is a contract of *government*—a *constitution*—and this is in its nature and design *for ever*.——It comprehends the present and the *unborn*—through all generations—posterity—which is as unlimited as time. That any one can break it up rightfully, or diminish its sphere of operation, is an absurdity.——Burlamaqui says, in describing the essential constitution of a state, that its first covenant is an engagement to join *for ever* in one body. 2 Burl. 22, 28.——The Constitution of the United States was made by the *people*, describing them by *one description* as people of the United States—not confederating—nor tying themselves together—but meaning to form a *union*—a unity—a national congress as a people. Where does a part of this people get the right to withdraw and renounce?——No sound and intelligent man believes it. ——*Secession* is a word to drug the consciences of ignorant men who are averse to treason.

have considered under various aspects, and have found illustrated in different branches of our great topic, the Modern State.

You will bear in mind, then, that the normal type of modern government is the National Polity, in contradistinction to the ancient city-state, to the medieval feudal system, or the political league—as the Hanseatic League, to the merely agglomerated monarchy, to the fragmentary monarchy, or the so-called universal monarchy, as it appeared last under Charles the Fifth, or was attempted by Napoleon the First, to the provincial separatism, or to the crowns of many little kingdoms crowded on one head, or the breaking up of one country, mapped out by Nature herself, as a portion of the earth for a united people, into jarring and unmeaning sovereignties, that have not the strength to be sovereign. It is the political organism permeating an entire nation, that answers the modern political necessities, and it alone can perform, as faithful handmaid, the high demands of our civilization. The highest type, its choicest development, is the organic union of national and local self-government; not indeed national centralism, or a national unity without local vitality. Our age demands *countries* as the patria both of freedom and of civilization,[1] and

[1] I ask permission to add, as a note, a passage of my Inaugural Address, delivered in 1858. When speaking of the necessity of a national university, the following remarks were made:

"Our government is a federal union. We loyally adhere to it and turn our faces from centralization, however brilliant, for a time, the lustre of its focus may appear, however imposingly centered power, that saps self-government, may hide for a day the inherent weakness of military concentrated polities. But truths are truths. It is a truth that modern civilization stands in need of entire countries; and it is a truth that every government, as indeed every institution whatever, is by its nature exposed to the danger of gradually increased, and at last excessive action, of its vital principle. One-sidedness is a universal effect of man's state of sin. Confederacies are exposed to the danger of sejunction, as unitary governments are exposed to absorbing central power—centrifugal power in the one case, centripetal power in the other. That illustrious predecessor of ours, from whom we borrowed our very name, the United States of the Netherlands, ailed long with the paralyzing poison of sejunction in her limbs, and was brought to an early grave by it, after having added to the stock of humanity the worshipful names of William of Orange, and De Witt, Grotius, De Ruyter, and William the Third. There is no German among you that does not sadly remember that his country, too, furnishes us with bitter commentaries on this truth; and we are not exempt from the dangers common to mortals. Yet, as was indicated just now, the patria of us, moderns, ought to consist in a wide land covered by a nation, and not in a city or a little colony. Mankind have outgrown the ancient city-state. *Countries* are the

the greatest political blessing vouchsafed to England was her early nationality, together with her early and lasting self-government. By this combination alone she escaped being drawn into the vortex of centralization, which became almost universal on the Continent. Modern patriotism will not be minimized; it will not be restricted to a patch of land carved out by some accidental grant; Lucca or Lippe are not names to inspire it; it will have a portion of the earth with a dignified geographical character, pointing to a noble purpose, and a mission imposed by Him who willed that there should be nations. Is there anything nobler in the range of history than a free nation, conscious of its national dignity and purpose? Is there anything nobler to behold in our own times than the struggle of the Italians for a united Italy, after centuries of longing—an Italy for which the aged Bunsen, the German scholar and high officer of a bureaucratic State, prayed with his dying breath? Is there anything more fervent than the yearning of the Germans for one undivided Germany, at any cost, disregarding all the long-sustained but diminutive sovereignties, knowing that the sovereign source of political right, above all assumed sovereignties, is the conscious desire of a great people to be a nation?

orchards and the broad acres where modern civilization gathers her grain and nutritious fruits. The narrow garden-beds of antiquity suffice for our widened humanity no more than the short existence of ancient states. Moderns stand in need of nations, and of national longevity, for their literatures and law, their industry, liberty, and patriotism; we want countries to work and write and glow for, to live and to die for. The sphere of humanity has steadily widened, and nations alone can now-a-days acquire the membership of that commonwealth of our race which extends over Europe and America. Has it ever been sufficiently impressed on our minds how slender the threads are that unite us, according to some, in a mere political system of States, if we are not tied together by the far stronger cords of those feelings which arise from the consciousness of having a country to cling to and to pray for, and unimpeded land and water roads to move on?

"Should we then not avail ourselves of so well-proved a cultural means of fostering and promoting a generous nationality, as a comprehensive university is known to be? Shall we never have this noble pledge of our nationality? All Athens, the choicest city-state of antiqnity, may well be said to have been one great university, where masters daily met with masters; and shall we not have even one for our whole empire, which does not extend from bay to bay, like little Attica, but from sea to sea, and is destined one day to link ancient Europe to still older Asia, and thus to help completing the zone of civilization around the globe? All that has been said of countries and nations and a national university would retain its full force, even if the threatened cleaving of this broad land should come upon us. But let me not enter on that topic of lowering political reality, however near to every citizen's heart, when I am bidden by you to discourse on political philosophy, and it is meet for me not to leave the sphere of inaugural generalities."

We have discussed that great period in the history of our race which I have called the period of nationalization, when countries, national governments, national languages, and national literatures arose from the frittered state of the feudal system, and have seen that many peoples of our cis-Caucasian race have suffered even despotism to take a wide sweep, provided they saw that national cohesion and a *political country* would be its effect.

The national polity is not only the normal type of our period of civilization: it is also charactistic of it. For, if we can call the Jewish theocracy, in a purely political point of view, a national government composed of tribal elements, it was exceptional in antiquity, and did not endure. After the national reigns of David and Solomon, Israel seceded from Judah, and civil war, disgrace, ruin, servitude, and paganism covered the land, while Isaiah threatened and Jeremiah wept.

When, recently, we treated of the internal and administrative organization of the different governments, you will remember that it was stated that the growth of general governments is various and scarcely ever of a uniform character in each single case. Gradual agglomeration and union, conquest, and a certain uniformity imposed by the conqueror, successive and slow systematizing, social assimilation, or a great revolution with a sudden and entire reorganization according to some distinct plan (as was the case with France in her revolution of the last century), evolution and revolution, force, freedom, and accident, are the different processes or forms of changes we meet with in history. These processes influence more or less the form of internal organization, but do not by any means necessarily constitute its lawful foundation. The national type is the type imposed upon our race, as the great problem to be solved and its great blessing to be obtained. It is sovereign to all else. It is the will of our Maker—the Maker of history.

The instinctive social cohesion,—the conscious longing and revealing tendency of the people to form a nation, and to make the minor organization subservient to the great end of the modern polity,—the true public spirit and expanding patriotism, which will not be cramped by some grant given by some

king to needy courtiers, or extorted in times of gallant political egotism,—these have their plenary rights too.[1] There is no German who thinks that his heart, throbbing for his country, must be awed into calmness by the sovereign rights of a Duke of Berenburg or Reuss; there is no Italian who—because the Duke of Modena had his historically established rights, or Florence has her noble history, and Tuscany has had her kindly princes—thinks he must not consider it the most nobly symbolic occurrence of his history, since Rome ceased to be Rome, when Garibaldi held out his hand to Victor Emanuel, and breathed the words, *Rè d'Italia!*

And these remarks find their application in treating of the constituting fundamental laws of our race, and of our own until now revered Constitution.

[1] Note.—To this passage, or to the whole page containing the concluding remarks, Mr. Binney added the following memorandum:—This is historically true, and the Revolution could never have succeeded without it.——I have examined all the measures of the first Congress of Deputies in 1774, 1775, and they all speak this language. The addresses to the people of Great Britain, to the king, to the people of the colonies, to Canada, to Jamaica—all speak the same thing. The people are everywhere *homologous*, and these papers homologated them.——Subjects of Great Britain—people of one blood, one language, one religious faith, one hope, one destination, a common paternity—in fine, a family, *in tribes*.——The different charters were little more than acts of incorporation, to give facility to political action in particular localities.

SECOND LECTURE.

The flowing over of European population and its pouring into America, is one of the most momentous facts in the history of the cis-Caucasian spreading over the globe. It is the second Migration of Nations; and in this migration of our race it is a fact of historic mark and moment that the southern European nations of Roman Catholic religion and of Latin despotic imprint, without an institutional character, colonized South America; while those who peopled North America, and who gave it distinct social features, were sent from the Teutonic north of Europe, then in the great struggle of Protestantism with Catholicism—a struggle which extended far beyond the sphere of religion, when Hotman and Languet, bold Protestants, had dared to claim "sovereignty for the estates."[1] These settlers of the North came chiefly from the Netherlands and from England—manly, venturous, clad in the armour of self-government, and belonging to a race with institutional instincts. This fact, and that they left Europe after the tide of nationalization had fairly set in, and national governments had become the great normal type of polity, with the necessity of countries large enough for large patriotism, and that they came to a large country—these are essential in history. They settled in a portion of the globe marked by a dignified geography—a vast country with fertile plains and generous rivers and treasuring moun-

[1] The intimate connection between Protestantism and modern liberty, was lately solemnly acknowledged, although deeply deplored, by the highest Catholic authority. Pius IX., in his allocution of Dec. 17th, 1860, said, "In fact, we have to deplore the invasion of perverse doctrine which, sprung from the principles of the disastrous Reformation, has acquired almost the force of public law." I quote from the London Times, supposing the translation to be correct.

I have frequently been obliged to point to the great process of nationalization manifest in our race. Whether this will lead to or be connected with the ultimate de-papalization of the Catholic Church, returning to its government by councils, is a speculation not to be indulged in in this place.

tains before them, and behind them the sea—then still, as in the times of Horace, but now so no longer, the oceanus dissociabilis. The character, and the breeding, and the law those men brought with them, and the great country they settled in,—these are essential in our history. The different charters, of various and frequently undignified origin, obscurely and often confusedly partitioning this land, were mere conduits of this great migration. So far as these charters mapped out certain portions of the land, they were of little more importance in the great translation of the Anglican race than the ships in which these settlers came to this continent. There was little in the various charters that was inherently essential, historically predisposing, historically presaging; but there was historic prophecy in this noble land, with these great coasts, and in the peopling it by that virile race, with its aptitude for self-government, wedded to freedom, tried by persecution. It was a people, with the same language, the same common law, the same political concepts, the same reminiscences and historical associations of ideas, the same mother country, the same literature, the same religion, the same aspirations, the same domestic economy, the same royalty, centering, indeed, at a distance, but spreading over the entire, well-marked, cohesive, yet almost unbounded land, taking possession of the country by the same jus divinum of civilization, expounded at a later period by our great Judge Marshall.[1] They were divided by their charters, but at no time was their removal from one province to another impeded on political grounds. All owed and professed the same and a direct allegiance to one crown; none were ever foreigners as to any of the others; there was never even the incipiency of different nationalities among them. They felt themselves what they soon came distinctly to express themselves to be, a people. The national current flowed here, as it did in the contemporary un-united countries, in Germany and Italy, that had resisted the providential decree of nationalization.

In the middle of last century the common feeling found a distinct enunciation. A convention from the different colonies was held at Albany, in June, 1754, to consider a plan of uniting

[1] Johnson *v.* Mackintosh, 8 Wheaton.

the colonies. The word *union* was there officially used. "Of this convention Franklin was a member, and a plan of general union, known afterwards as the Albany plan of Union, but of which he was the projector and proposer, was conditionally adopted by the unanimous vote of the delegates. The condition was that it should be confirmed by the various Colonial Assemblies."[1]

This was in 1754. Our difficulties with the mother country began: and from that moment the idea of one "America," a "United America," one people, one common cause and interest, one nation, one supreme government, became more and more clearly expressed and more distinctly acted upon. It was not, indeed, without occasional movements to the contrary; but though a ruffling breeze sometimes sends waves on the surface of our Hudson northward, and though the tide stems the river, its volume steadily flows in the appointed course.

In Parliament and in British state papers, "America," as one country, is spoken of; we were attacked as one country, we defended ourselves as one country, and we proclaimed our independence as one country and called the government of that one country, the Union.

Let me read to you the words of Charles Cotesworth Pinckney, the honored soldier and statesman, at one time "an authority of unbounded reverence in South Carolina." In the Legislature of 1788, he said:—

"This admirable manifesto (the Declaration of Independence) sufficiently refutes the doctrine of the individual sovereignty and independence of the several States. In that declaration the several States are not even enumerated; but after reciting, in nervous language and with convincing arguments, our right to independence, and the tyranny which compelled us to assert it, the declaration is made in the following words, &c., &c. The separate independence and individual sovereignty of the several States were never thought of by the enlightened band of patriots who framed this declaration. The several States are not even mentioned by name in any part, as if it was intended to impress the maxim on America that our freedom and independence *arose from our Union;* and that, without it, we never could be free or inde-

[1] I quote from Hon. R. C. Winthrop's Address, delivered before the Maine Historical Society, Boston, 1859.

pendent. Let us, then, consider all attempts to weaken this Union by maintaining that each State is separately and individually independent as a species of political heresy which can never *benefit* us, but may bring on us the most serious distresses."[1]

It seems that the following chronological statement, very imperfect on account of its brevity, will, nevertheless, be instructive with reference to the remarks just made.

In 1765, the Stamp duties create a general indignation, and Thacher, of Massachusetts, the associate of Otis, says of Virginia, which first spoke out in resolutions proposed by Patrick Henry:— "Those Virginians are men."

" Oct. 19th. The Declaration of Rights, signed by a number of Colonies.

In 1768, Massachusetts calls upon all the colonies to join in one united resistance.

In 1772, England passes acts regarding "America."

In 1773, the year when the tea was destroyed, Franklin, agent for Pennsylvania, Massachusetts, New Jersey, and Georgia, recommends to Massachusetts a General Congress.

In 1774, a Convention in Suffolk county, Massachusetts, recommends that the detested acts "should be rejected, as the attempts of a wicked administration to enslave America."

At the same time the idea of a Provincial Congress is current. Washington writes:—"Shall we supinely sit, and see one province after another fall a sacrifice to despotism?" A national spirit shows itself throughout the land, and Virginia votes that an attack upon one colony was an attack upon all British America.

" Sept. 5th. Congress at Philadelphia, the Continental Congress, "American Association."[2]

After the separation of the Continental Congress, general preparation for war, and pronounced determination to assist one another.

1775. "We, the delegates of the United Colonies," give the commission to Washington, and vest him "with full power and

[1] Debates in South Carolina (Miller), p. 43. I quote from the Appendix to The Union, a Sermon delivered on the Day of the National Fast, Jan. 4, 1861, by T. H. Taylor, D. D.

[2] A pamphlet was published at Charleston, S. C., in 1859, "The Association of 1774," with the well-executed fac-similes of the signers.

authority to act as you shall think for the good and welfare of the service."

1775. July 4th. Washington issues an order, in which he declares that all the troops raised, or to be raised, "for the support and the defence of the liberties of America" being taken into the pay and service of the Continental Congress, "they are now the troops of the United Provinces of North America; and it is hoped that all distinctions of colonies will be laid aside, so that one and the same spirit may animate the whole."

The first resolution of the Mecklenburg Declaration—that bold and historically naïve instrument—declares: "That whosoever directly or indirectly abetted or," &c., "countenanced the unchartered and dangerous invasion of our rights, as claimed by Great Britain, is an enemy to this country, to America, and to the inherent and inalienable rights of man."[1]

1776. May 15th. Virginia directs her delegates to propose a declaration of independence to Congress.

" July 4th. Declaration of Independence.

" July 12th. Committee appointed to declare a plan of Confederation.

" July 9th. Washington communicates the Declaration of Independence, and, in his order of the day, says that he hopes that "every officer and soldier will act with fidelity and courage, as knowing" * * * "that he is now in the service of a state possessed of sufficient power to reward his merit and advance him to the highest honors of a free country."

The first oath administered by order of the Continental Congress was, that the officers of the army acknowledged each of the United States (enumerating them) to be free, independent, and sovereign *States*, abjuring allegiance to Great Britain, and promising to maintain the United States against George III.," &c.[2]

" Dec. 27th. A sort of dictatorship, with stringent authority "wherever he may be," is given to Washington.

[1] The Second Mecklenburg Declaration, adopted 30th May, 1775, was presented to the Continental Congress May 27th, 1776, six weeks before the adoption of the National Declaration of Independence. The second resolution of this second declaration of Mecklenburg begins with the words, "the Provincial Congress of each Province, under the direction of the great Continental Congress," &c.—The True Origin and Source of the Mecklenburg and National Declaration of Independence. By Rev. T. Smyth, D. D., Columbia, S. C., 1847.

[2] 1 Journals, 525, Oct. 21st, 1776.

1777. Nov. 15 to 17. The Articles of Confederation and Perpetual Union actually adopted by Congress. State governments formed.

1778. The oaths to be taken by the officers was modified, omitting the words, thirteen States, so that it read, "to the United States of America."[1]

1782. Seal of the United States, with the inscription *E Pluribus Unum*, adopted.

1783. Washington, in his renowned letter to the governors of the States, points out "four things essential to the well-being, I may even venture to say to the existence, of the United States as an independent power." And the first of these four things is, "An indissoluble Union of the States under one federal head."

1786. March 14th. The oath of officers is changed, and each one swears that "he owes faith and true allegiance to the United States, and agrees to maintain its freedom, sovereignty, and independence."[2]

1787. July 13. The "Ordinance for the government of the Territory northwest of the river Ohio."

1788. Sept. 17. Constitution of the United States.

Gentlemen, you may examine the many folios of the American Archives,[3] and, in all the documents and state papers recorded there, you will find the same tone, spirit, and language. The people, the nation, the country, "United America," as Washington used the term, at a later period,[4] in the same sense in which we now hear of United Italy, are the habitual terms used by those who struggled for independence and obtained it. The great Declaration of Independence has not a word of separate independence; not an allusion to it; not one separate complaint. It is the people of the whole country that declare themselves independent, and unitedly

[1] 2 Journals, 427, February, 1778.

[2] 4 Journals, 463–462, March 14th, 1786. I owe this reference, and those in the two preceding notes, to the research of my colleague, T. W. Dwight, LL.D., Prof. in the Columbia Law School.

[3] By Peter Force, Esq., published under the sanction of Congress.

[4] "That as the All-wise Dispenser of human beings has favored no nation of the earth with more abundant and substantial means of happiness than United America," &c.—Washington, in a Sketch of his Farewell Address. See H. Tinney's Inquiry into the Formation of Washington's Farewell Address. Philadelphia: 1859, p. 177; and J. Sparks' Washington's Writings, 12 vol. p. 392.

complain of wrongs felt by the whole. "Before, and for nearly two years subsequent to the Declaration of Independence, the struggle was maintained by union alone,"[1] by a people conscious of being one, in their formation, their interest, and their destiny.

The Declaration of Independence is headed, A Declaration of the Representatives of the United States of America in Congress assembled. On a previous occasion the term United Colonies had been used. The republic of the Netherlands, whose history and polity, achievements and defects were well known and studied by the statesmen of our revolution, styled itself indifferently the United Provinces, and the United States, of the Netherlands; nor was the meaning of the word *state* distinctly settled, either in Europe or America, at the time of the revolution. It is certain that it was not taken in the most enlarged sense of the different meanings which are, even now, attached to this word, the history of which in all the European languages is remarkable and instructive.

Had there been a compact name for our country, it might have been used; but no name had formed itself. Science invents names; but for the growth of names in practical life a formative *naïveté*, not checked by learning and literature, is requisite, the period of which had already passed when the early settlers left their mother country. This want of a name is to be regretted. In history, names like England, France, Italy, have great effect. They are the greatest national symbols a people can have, far greater even than a flag; and I would frankly say that should really the calamity of sejunction and disintegration fall upon us, it would be wise for those who continue to cohere broadly to adopt in their new national constitution one comprehensive name for the country, whether it be the resumption of the old name, Winland, which the Norse people gave to our portion of America, or any other sound and simple one. Taste and tact must guide in matters of this sort.[2]

[1] Hon. Reverdy Johnson's speech. Proceedings at a public meeting of the Friends of the Union, on January 10, 1861. Baltimore: 1861.

[2] "Columbia" has been invented by poetry, for the poet must have a compact name; but it has remained in the realm of poetry. It is worth noting, that in Europe, almost universally, the name "America" is used for the United States.

In no wise however would I agree in the opinion of one of the most prominent American statesmen, now dead, who maintained repeatedly, in the intercourse I had with him, that the absence of a name for our portion of America had positive significance and was indeed the result of the fact that there is no American nation, and that we have no country. The history of the United States, all the debates, letters, and state papers belonging to the transition period, from the Declaration of Independence to the adoption of the Constitution, the language of Washington and his compeers, show that this opinion is without foundation.

The Americans declared themselves independent in the year 1776, and in 1777 the Articles of Confederation were adopted. The union sentiment, which pervaded the whole people, and the necessity of united action, led to this first attempt at forming a united government. The succeeding years proved that it was no successful attempt, but they mark the transition period, and I invite your attention to the following points:—

The title of the Articles of Confederation is: *Articles of Confederation and Perpetual Union between the States of*, &c. Here then we meet, for the second time in our history, with the word *union*—a term the meaning of which was well established, and had been so for many centuries, in the English language. The Union is called *perpetual*. Terms of great force are used, both as to the intensity of combination and as to its duration.

Yet the second article of this instrument runs thus: "Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this confederation expressly delegated to the United States in Congress assembled."

What does the word *sovereignty* mean in this article? You will recollect that I showed, in the lectures on this comprehensive subject at the beginning of this course, how vaguely the term *sovereign* has been used and to this day continues to be used, and how unsatisfactory many arguments touching our highest interests are, because starting from so ill-defined and

yet so ambitious a term. Coke declared in the Commons, when the Bill of Rights was debating, that the English law did not know the word *sovereign*. And it would have been far better had the word never entered our public law: but it has been used. Sovereignty, you remember, always means, now-a-days, either complete independence towards other, that is, foreign, states, or it means not only the highest but the overruling power within a state; or it means, in political metaphysics, that original self-sufficient source of authority and power from which all other authority is derived; or, lastly, it simply means supreme, in any given sphere, being equivalent to chief. You will remember that the word is derived from the low latin, *superanus*, and that the Italian writers of the middle ages speak of the *sovrani* and the *sottani* (the upperlings and underlings).

We need not occupy ourselves with the last mentioned two meanings of the term; and as to the first two, let me observe that, surely, with reference to foreign states, no one in this country, other than the United States collectively, has ever been sovereign. Instead of dwelling on details that bear on this point, I give you an extract of Washington's letter of the 8th of June, 1783—the noble circular to the governors on disbanding the army. "It is," he says, "only in our united character as an empire that our independence is acknowledged, that our power can be regarded, or our credit supported among foreign nations. The treaties of European powers with the United States of America will have no validity on a dissolution of the Union. We shall be left nearly in a state of nature; or we may find, by our own unhappy experience, that there is a natural and necessary progression from the extreme of anarchy to the extreme of tyranny, and that arbitrary power is easily established on the ruins of liberty abused to licentiousness."[1]

[1] Sparks' Life of Washington, vol. 8, p. 439.—I add an extract from a letter of Mr. Binney, relating to this passage:—

"Really, and in point of fact, there was at that time no *legal union*; it was a voluntary Congress and no more. Besides, the declaration that they were independent *States*, is necessarily distributive and several. Independence is predicated of the States, and not of the one State or government formed by the Union. No such *Union* then existed, as in the language of law to constitute a State. The first Treaty with France, 6th February, 1778, is between 'the most Christian

As to the second meaning of sovereignty, we know, indeed, for history testifies to it on every page, that the colonies exercised a very high degree of self-government at the moment in which independence was declared (in some cases even before that period), but never absolute autonomy. The feeling of a union—of mutual dependence—underlies the whole from the beginning. The official letter accompanying the Articles of Confederation, dated Yorktown, November 17, 1777, and in which Congress recommends their adoption to the States, has these words: "In short, the salutary measure can no longer be deferred. It seems essential to our very existence *as a free people*."[1]

Congress, "supported by the confidence of the people, but without any express powers, undertook to direct the storm, and were seconded by the people and by the colonial authorities,"[2] and after the presentation of the Articles, as late as November 15th, 1777, to the States (not adopted by all until the year 1781), Congress proceeded as if invested with the most explicit powers; they even went so far as to bind the nation by treaties with France; nor was it thought necessary that those treaties should be ratified by the State legislatures.[2]

Yet those who incline in their arguments toward sejunction and who seem always to confound nationality with centralization object that, as soon as the colonies had declared themselves independent of the uniting crown of Great Britain, each one was of necessity sovereign in its separate character, and hence

King and the thirteen United States of North America, to wit, New Hampshire,' &c., giving all their names in order. At that time the Articles of Confederation were not ratified by a single State. I find the dates of ratification were as follows:—

By 8 States on 9th July, 1778.	By 1 State on 26th Nov., 1778.
" 1 " on 21st " "	" 1 " on 22d Feb., 1779.
" 1 " on 24th " "	" 1 " on 1st Mar., 1780.

This Treaty, and the Treaty of Alliance on the same day, say nothing about acknowledgment of our independence. France treated with us *as* independent, our plenipotentiaries being appointed by Congress, under the separate resolutions of the States, giving authority to their deputies. But the 8th article of the Treaty of Alliance agrees that neither of the two parties shall conclude truce or peace with Great Britain without consent of the other; and they mutually engage 'not to lay down their arms until the independence of the United States shall have been formally or tacitly assured by the treaty or treaties that shall terminate the war.'"

[1] Elliot's Debates, vol. I. p. 70.

[2] Du Ponceau, View of the Constitution.

the words in the third of the Articles of Confederation,—that the States "severally enter into a firm league of friendship."

These words are indeed in the third article; but the fourth article has, on the contrary, a very national character. It was, as I have called it, a transition period—a period of forming, not of finished formation, with all the contradictions and unclearness natural to such a period. The colonies, it is said, were sovereign, if for no other reason than that they were independent, and could not be otherwise than sovereign; but sovereignty cannot be predicated, it seems to me, in a purely negative sense. Was Alexander Selkirk, when wholly independent, a sovereign? Were the cities of the kingdom of Westphalia, when Jerome declared that he was no longer their king, and before the conquering allies took possession of them, sovereign? The colonies never fully acted as so many sovereigns; all action was united American action, and it seems that if the distinction between de jure and de facto, or between practical (or, rather, *factal*) and theoretical character is inapplicable to anything, it is to sovereignty.

These Articles, however, to which frequent appeal has been made of late, proved utterly inadequate to the wants of the nation. By their adoption the benefits of a government had been hoped for, without establishing a government. The period from 1777 to the adoption of the Constitution, is marked, by the side of the noble deeds that were performed, with mutiny, rebellion, jealousy, extravagant notions of equality in Rousseau's sense, want of organic action, lack of funds, and the despondency of some of the best. Even Madison considered America as almost lost; and Washington, the *justus et tenax*,—even he, at least on one occasion, was near losing hope. The call for a better and firmer system for a government became general, and after infinite toil and anxiety the Constitution of the United States was established. It is impossible to understand this great document as it ought to be understood by every one who aspires to a dignified consciousness of his rights and duties as an American citizen and to become a guardian of American citizenship, without a minute knowledge of our history and a truthful study of the debates

which led to the framing and adoption of the Constitution. I once more recommend to you, then, this earnest study as a matter of good faith, conscience, and true loyalty. In this place, you are aware that I can do no more than direct your attention to a few essential points. Let me commence by pointing out, in the preamble of our fundamental law, the three words, Constitution, People, Union, and the total absence of the term Sovereignty from the whole document.

To argue from mere terms, of no definite or of a varying meaning, is dangerous, and frequently indicates faithlessness; but when well understood terms are carefully used in contradistinction to other terms, they become important. Thus we must observe that the fundamental law is no longer called Articles of Confederation, but a Constitution. The framers of the Constitution knew the meaning of the term. Every one of them had heard and read about the Constitution of England, by which had always been understood the aggregate of all those statutes, customary laws, declaratory acts and decisions, which form the framework of that government and secure the rights of Englishmen. They knew that Constitution well, for they had struggled long to have its benefits secured before they ventured on the Declaration of Independence. The term Constitution was carefully and purposely used. Madison distinguished between the new Constitution and the "union when it was a federal one among sovereign States."[1]

This Constitution begins with the words: "We, the people of the United States,"—to me, the most magnificent words I know of in all history. They seem like an entrance, full of grandeur and simplicity, into a wide temple. It is the whole nation that speaks in its entirety and power; and yet the word People, in its plural sense, gives more life to it. The attempt has often been made, inconsistently enough, by those who call themselves strict constructionists, to show that We, the People, does not mean the people, but means the different States. This is a grave mistake, proved by the history of the Constitution, as well as by its own meaning and provisions; as, for instance,

[1] Elliot's Debates, Vol. V. p. 135.

by the national election of the President. The mere *modus* of adopting the Constitution proves nothing.

The People of the United States establish the Constitution "in order to form a more perfect union." The Articles of Confederation had already established a perpetual union; a more perfect union, therefore, than a perpetual union, means more perfect in its intrinsic character. Perpetuity does not admit of a greater or less degree.

We meet thus with the word *union* for the third time, and it ought to be remembered that, while the framers of our Constitution were men noted for their idiomatic use of the English language, the meaning of the term has not changed from the times of Shakspeare and Milton, nor, indeed, from the earliest times. It has always meant a close and most intimate connection or inter-combination of parts, forming henceforth a whole. Catholics and Protestants have always called marriage a union of husband and wife, and have termed the relation of the Christian soul to Christ a union. The many attempts of reconciling the Protestant and Catholic Churches were called attempts of union.[1] Shakspeare and Milton use union in the most forcible sense. The framers of the Constitution were acquainted with De Foe's History of the Union, namely—of England and Scotland; Bolingbroke had spoken of the union of the king's subjects, meaning the entire agreement of Jacobites and Whigs,[2] as Vilanni, in his history, speaks of "breaking the union of the holy Church."[3] But it is useless to multiply instances. The word and its full meaning were well known to our Revolutionary men. As early as 1782 they had adopted the inscription on the seal of the United States, *E Pluribus Unum*, and this, upon the report of three, two of whom were South Carolinians.[4]

[1] That of Leibnitz, I believe, was the last. Union was always given, in Latin, by Concordia.

[2] Lord Bolingbroke, in a letter offering his good services to the Ministry. Letters, p. 250.

[3] Storia, di G. Vilanni, Giunti 1587, 4, 21, 3.

[4] The inscription had been proposed before. The three forming the committee were Middleton, Boudinot, and Rutledge. See Capt. Schuyler Hamilton's History of the National Flag, Philadelphia, 1853, p. 105. The English flag—"the Union"—was the basis of our national flag.

Throughout the Debates of the Constituent Convention we find it expressed—I wish I had counted how often—that there is the most urgent necessity of establishing a national *government*. This is the standing phrase of all the members. They did not mean to make *a nation*. Nations are not made by man, but he may politically stamp a nation; just as government cannot make money, but it may coin commodities that are already values.

Almost as frequently we meet in the debates with the expression, that unless we have a national government we cannot avoid anarchy and convulsion. Those who, like Franklin, did not approve of every feature in the Constitution, declared themselves nevertheless ready to accept it, in order to prevent anarchy and convulsion. Why anarchy? When sovereigns fail to conclude a league, war may follow, but it is not anarchy. Anarchy is absence of law and government where they ought to exist—that is, among and over a people.

The Constitution declares that there is such a crime as treason against the United States. It defines the crime with distinct lineaments. Treason can only be committed by him who owes allegiance against him to whom he owes it. The Constitution, therefore, acknowledges allegiance to the United States; and allegiance is the faith, fidelity and loyalty due the sovereign—in our case, the nation or country. If different states claim an allegiance due to their sovereignty, it must be proportioned to that sovereignty. Switzerland is divided into cantons, and although the deputies of the cantons were called ambassadors, before the Helvetic Constitution was somewhat assimilated to that of the United States, the Swiss publicists speak of the sovereignty of Switzerland and the *cantonal* sovereignty of each canton, meaning thereby its self-government with an entire organization of a government;[1] but I believe the idea of a cantonal allegiance is unknown to them.

The Constitution invests the national government with most of the usual attributes of sovereignty—far more than the Netherlands would have conferred on Elizabeth had she been willing to become their "prince." It establishes a govern-

[1] Bluntchli, General Public Law, Munich, 1857.

ment in its entirety, and applies a complete representative government to a confederacy of states with the highest degree of self-government. It does this for the first time in all history. The Constitution gives to the House of Representatives a complete national character, by founding the representation on the population, and making the representatives vote individually. It gives even this representative and national character to the Senate, inasmuch as the Senators also vote individually, and not by States, although each State, by sending two Senators, irrespective of its population or wealth, is so far represented as State. No one in Congress has a deputative character, in the medieval sense, or is there as attorney, depending upon previously given instructions, as the ambassadors of the German princes in the German Diet.[1]

Extreme States-right men have expressed regret that the Articles of Confederation have been abandoned. Little do they know what they wish for. Had our Constitution not been adopted, the necessary consequence of all real confederacies, or of an absence of general government among those who nevertheless feel that they are destined to be one people, must have taken place. One or the other powerful State must, in the inevitable course of events, have obtained the leadership, as Athens or Sparta obtained the hegemony of Greece, or as, in the proclamation of William I., which reached us a few days ago, Prussia claims the German hegemony. Indeed, was not Virginia actually acquiring the American hegemony? In course of time, New York, or Pennsylvania would have struggled for the leadership, and we should have had our American Peloponnesian war, and, like Greece, be buried under it.

The Constitution intrusts the executive power to one officer, and that one of a broad national character, elected as he is by the whole. He is the standard-bearer, the *gonfalonier* of the Union.

Washington will be admitted as one of the wisest and most profound witnesses as to the spirit and essence of our Constitution, and I may fitly conclude with some extracts

[1] These subjects have been dwelt upon in the chapter on *Instruction*, in my Political Ethics, second volume.

from his Farewell Address, which is not only an affectionate address to the people, but a state paper long meditated upon and written most carefully, with the advice and upon the suggestions of fellow-statesmen. This is admirably shown in Mr. Binney's "Inquiry into the Formation of Washington's Farewell Address;"[1] and European writers on public law, by the quotations from it with which I meet in the course of my reading, show that they by no means consider the address in an affectional point of view merely.

Washington uses such expressions as follow: "the unity of government, which constitutes you one people;"—"the name of AMERICAN, which belongs to you in your national capacity, must always exalt the just pride of patriotism more than any appellation derived from local discriminations;"—"carefully guarding and preserving the union of the whole;"—"these considerations . . . . exhibit the continuance of the Union as a primary object of patriotic desire;"—"we are authorized to hope that a proper organization of the whole, with the auxiliary agency of governments for the respective subdivisions, will afford a happy issue of the experiment;"—"to the efficacy and permanency of your Union, a government of the whole is indispensable. No alliances, however strict, between the parts can be an adequate substitute;"—"the adoption of a constitution of government better calculated than your former for an intimate union and for the efficacious management of your common concerns;"—"respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty;"—"the Constitution which at any time exists, till changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all;"—"to put, in the place of the delegated will of the nation, the will of a party;"—"it will be worthy of a free, enlightened, and, at no distant period, a great nation;"—"if we remain one people, under an efficient government," &c., &c. Read, I advise you, my younger hearers, the whole Farewell Address with that pondering attention which a paper so well-

[1] Philadelphia, 1859.

advised, of so experienced, so calm, so pure and so universally acknowledged a statesman, demands at the hands of every one of us,—the document of a patriot who is daily growing in the affection of our race,[1] and who considered it the greatest blessing vouchsafed to him, in his eventful life, "to have been, in any degree, an instrument in the hands of Providence to promote order and union."[2]

The Constitution of the United States broadly declares and decrees that all the laws made in pursuance of the same, shall be the supreme law of the land. This provision and many more, such as that establishing a national citizenship, the organic law of amendment which it contains, and the characteristic features that have been mentioned, as well as the whole genesis of the Constitution, prove the following points:

The Constitution is a law, with all the attributes essential to a law, the first of which is that it must be obeyed, and that there must be an authority that can enforce obedience. It is a law, not a mere adhortation, not a pastoral letter, not a "proclamation in terrorem."

It is, as far as it goes, a full and complete law, carefully defining its own limits; and the provision that the national government has no rights but those which are granted to it, cannot mean that it must allow itself to be broken up whenever it pleases any portion possessing the "reserved rights" to do so. Logically speaking, it would be absurd; morally speaking, wicked. This interpretation of the doctrine of Reserved Rights, it seems, would amount to nothing less than to the well-known Mental Reservation, with this fearful difference, that we would apply to the consciences of entire States what

[1] Such works as Guizot's "Essay on the Character and Influence of Washington," translated from the French, Boston, 1840, and, indeed, many other writings of European authors, prove that history is pointing more and more frequently to him as a favorite on that tablet on which the names of Thrasybulus, Doria, and William the Silent are inscribed beside his own.

[2] I copy these words from a letter of Washington's to his "Fellow-Citizens and Brothers of the Grand Lodge of Pennsylvania" (without date), which I found in a hairdresser's shop in New York. When waiting for my turn, and revolving some points of these Lectures in my mind, my attention was attracted by the gilt frame surrounding the letter, the genuineness of which no one acquainted with Washington's handwriting will doubt. I believe the letter is given in no published work.

the Jesuit used for the purpose of easing the consciences of private persons.

It is a national law, having proceeded from the fullness of the national necessity, national consciousness and national will, and is expressive of a national destiny.

It is a national fundamental law, establishing a complete national government,—an organism of national life. It is not a mere league of independent states or nations; it allows of no "Sonderbund." It is an organism with living functions; not a string of beads in mere juxtaposition on a slender thread, which may snap at any time and allow the beads to roll in all directions.

The more you study history in candor and good faith, and not in order merely to collect points to make out a case, the more you will be convinced that, as indeed I have indicated before, the general government, nationally uniting a number of States, with the framework of local governments, is that very thing which America has contributed as her share to the political history of our race. A great historian has justly observed, that Athens and her many illustrious citizens were never so great and noble as when they were animated and impelled by a Pan-Hellenic spirit. And so it is with us. What is great, what is noble, what is of lasting effect, what is patriotic, what is inspiriting to behold, in our history and public men, is Pan-American. Provincialism has neither freed nor raised this people. On the contrary, every step that is taken, receding from the Constitution as the government of a nation and a united people, is a step toward the confused transition state in which the country was under the Articles of Confederation; every measure that is taken to lessen its health and vigor, its lawful and organic action, amounts to a drifting toward the anarchy from which the framers rescued the people with infinite labor and exertion. Sejunction, State-egotism, envious localism, do not only "hurt men, *sed leges ac jura labefactant*."

Our system, being neither a pure unitary government[1] nor

[1] Lest some readers should misapprehend the term *unitary government*, it may be stated that it does not mean either monarchy or a centralized government, but an undivided government for a given community, be it republican or monarchical;

a pure confederacy, is not without its difficulties. It has its very great difficulties, as our own times prove, but neither in our case nor in any other whatsoever, be it of practice, theory, or science, is an elementary difficulty overcome by seizing upon one of the contending elements exclusively, and by carrying it out to a fanatical end irrespective of other elements. Seizing upon the single idea of State-sovereignty—a modern fiction, taken in the sense in which the present extremists take it—denying, as was quite recently done in the Senate of the United States, all allegiance[1] to the United States, and imagining that liberty chiefly consists in denying power and authority to the national government, is very much like an attempt of explaining the planetary system by centrifugal power alone.[2] It is a fact, which you will mark as such for future reflection, that almost all, perhaps actually all, the most prominent extremists on the State-rights side—that is to say, of those statesmen who were most perseveringly bent on coercing the national government into the narrowest circle of helplessness—have been at the same time strongly inclined toward centralization and consolidation of power within their respective States. Secessionists by profession would cry "treason,"[3] in-

the opposite of a federal government. The government of England is unitary but not centralized.

[1] The so-called "Allegiance cases," in South Carolina, 2 Hill's So. Car. Rep., p. 1–282, are of great interest. They have been also separately published with the title, "The Book of Allegiance, or a Report of the Arguments of Counsel and Opinions of the Court of Appeals of South Carolina on the Oath of Allegiance; Determined on the 24th of May, 1834."

[2] The lecturer, according to his custom of pointing out the best writer on the opposite side, cited on this occasion the writings and speeches of Mr. Calhoun's latter period. The reader may find numerous publications taking the extreme, and, therefore, disjunctive State-rights views, mentioned in an article on "Lieber's Civil Liberty and Self-Government," by the late D. J. McCord, in the April number of the Southern Review, Charleston, 1854. In addition, may be mentioned Judge Henry Baldwin's "General View of the Origin and Nature of the Constitution and Government of the United States, deduced from the Political History and Condition of the Colonies and States and their Public Acts in Congresses and Conventions from 1774 till 1788, together with their Exposition by the Supreme Court of the United States," &c.: Philadelphia, 1837.

[3] The charge in such case would be grotesque. The like grotesqueness is illustrated in an incident which came to hand while these sheets were passing through the press, and which deserves being preserved in a note. If the papers report correctly, a Texas judge, whose name is given, of Rusk county, in his charge to the grand jury, "defined treason as a crime to be looked after in the event of the State withdrawing from the Union. After the State has fully and unconditionally severed the connection between the State and the Federal Government, then all who adhere to the Union, and so manifest the fact, are guilty of the

deed, were a portion of a State to intimate a desire to peel off one more skin of the bulb. Yet, suppose Rhode Island to secede, why should not Block Island set up as a nation? I say *suppose!* Have we not had close before our eyes a proposition of secession for our city? And what logical process shall stop us from proceeding to the sejunction of the different wards? One thing seems certain—and I conclude my remarks with this observation—that if ever the American people should be forced to make a choice between a unitary government and an unmitigated confederacy, they would be obliged to select the former type.[1]

crime of treason, subject and liable to indictment by the grand jury under the Constitution as it now exists. After secession, any word, deed, or act against the independence of the State would be treason."—*National Intelligencer*, Washington, March 22, 1861.

[1] I append here, the last and fullest note of Mr. Binney.

The confederation came first into action—I should rather say *the Congress of Deputies*—by votes of the legislative bodies in the Colonies before independence was declared; it had been *assumed* for the occasion. Deputies were sent to a Congress by votes of the different legislatures, on various terms, generally to agree upon and do what was needful in the emergency.—*American Archives*, Vol. I., 693, 4th and 5th September, 1774.

On the 24th of June, 1776, Congress resolved—That all persons abiding within any of the United Colonies, desiring protection from the laws of the same, owe *allegiance* to the *said laws*, and are members of such colony (2 *Journal of Congress*, 217): —that all persons members of, or owing allegiance to, any of the United Colonies, who shall levy war, &c., or be adhered to the King, &c., are guilty of treason against such colony:—that it be recommended to the several United Colonies to pass laws for punishing such persons, &c. *Allegiance* in these resolutions means *obedience* and nothing more. There was no independence,—no State constitution or government.

On the 10th of May, 1776, Congress recommended Colonies to establish forms of government.—2 *Journal of Congress*, 678.

Articles of Confederation were reported in Congress on 21st of July, 1775, and agreed to by Congress, 15th November, 1777; but not ratified by all the States until 1st of March, 1781. They were ratified by 11 States in 1778, by 1 in 1779, and by 1 in 1781. Maryland seems to have been the last, on the 1st of March, 1781.

The States adopted their forms of government on different days, and in different years. My edition of the first Constitutions gives these dates: New Hampshire, 5th of January, 1776, to 19th of September, 1776; Massachusetts, 1st of September, 1776, to 2d of March, 1780; Rhode Island and Connecticut continued their Royal Charter several years after the Constitution of the United States was adopted; New York, 20th of April, 1777; New Jersey, 2d of July, 1776; Pennsylvania, 15th of July, 1776, to 28th of September, 1776; Delaware, 20th of September, 1776; Maryland, 14th of August, 1776; Virginia, 6th of May, 1776, to 5th of July, 1776; North Carolina, 19th of March, 1778; Georgia, 5th of February, 1777.—*The Constitutions of the United States*, by W. Hickey, 398.

Now, whether some or all of these States were not fully sovereign at some point of time, in their separate character, as far as States can be in an undecided revolution, is the point. Supposing the acknowledgement of their independence to *retroact*, which I think is the law, then some of them were, at some point of time, sovereign and independent. As soon as each had ratified the Articles of Confederation, then such State was no longer fully sovereign,—not any of them after the final ratification on 1st of March, 1781. The articles recite that each State retains

Gentlemen, I now conclude this year's course on the Modern State. Not, indeed, that I have gone over the whole

its sovereignty and independence, and every power, jurisdiction and right which *is not expressly delegated to the United States*, in Congress assembled.

How much was both expressly delegated and also expressly prohibited to the States? Prohibitions were,—sending and receiving embassies, or entering into any conference, agreement, alliance or treaty with any king, power or State. No two States should enter into any treaty or confederation whatever between them; nor lay imposts or duties, which may interfere with treaties by Congress; nor keep vessels of war in time of peace, *except*, &c.; nor keep any body of forees, except, &c.; nor engage in any war, except, &c. Congress—the United States in Congress—alone had these powers; and these exceptions held till the more perfect union was made in the Constitution of the United States.

This statement disposes of the point. A sovereign who parts with such material parts of sovereignty is *sub graviori lege*,—not a sovereign in the general sense; sovereign, perhaps, in a *particular function*. And so, in some particular, is every man. A sovereign who can neither make war nor peace, nor lay a duty—nor make a treaty—nor keep a ship of war or a soldier in time of peace—nor enter into an alliance with another State—cannot possibly come under the established definition of a sovereign.

Illustration:

Allegiance not due to States *at all*. The sense and use of the word are abused by giving this name to the *fidelity* owing by a citizen to his State.

In the law of England, which follows the law of nations, allegiance is due only to the supreme protecting power—*fealty* to the lord from whom the tenant derives. The latter word is not technically applicable to a State, but the substance of it is.

Sovereignty in international law exists solely in the United States. Foreign States know nothing of our States,—our States do not separately represent the nation. *Independence* cannot be predicated of them separately. They are restrained and subordinated in many particulars by the Constitution of the United States. In no one instance is the United States subordinated to a State. The United States *cover* all—*permeate* all—*defend* all, both within and without, against foreign enemies and domestic insurrections, and against aggression by one upon another.

The *Constitution* of the United States is the SUPREME law of the nation, and so are the treaties by the authority of it, and the laws in pursuance of it.

Allegiance and *protection* are reciprocal. Who protects a State against a State or a foreign nation? Who protects the inhabitant and citizen of a State from the same? Who protects a citizen from the State in which he is domiciled? Protects him against a monarchical or non-republican constitution,—laws violating obligation of contracts—bills of attainder—ex post facto laws—tenders of paper money in payment of debts—against coinage of money—duties on imports or exports—troops, ships of war of a State? The United States only. Who naturalizes citizens? What Constitution do they swear to support? Their first vow and duty are to the *supreme* law; and the same is the duty of the native born.

Two allegiances to different kings, lords, or nations at the same time, impossible; but two *fidelities* in respect to different obligations, both possible and common. The irreconcilable hostility *in nature*, of one allegiance to a State and another to the Union, is proved by the manner in which, by false doctrine, the one has devoured the other, in our own case. *State rights* devouring *United States' rights*, and yet all the weaker for it. United States' rights cannot devour State rights, because the former are protective of the latter,—not the latter of the former.

The idea of one nation—one people—one allegiance—is indispensable to both the dignity and the freedom of the United States; no other sentiment can protect us against the hatreds, jealousies, and hostilities which merely allied peoples always feel. National *identity* is essential to prevent the selfish principle of our nature from turning to opposition. The *general identification* is that which begets a love of the nation or country. We love it more than all others, *because it is ours*.

Defend us from *State-ishness!*

ground of this comprehensive topic; but I have done what suggested itself as the best course. When I prepared it, I asked myself, Shall I treat of the whole in an encyclopedical method? or shall I treat of the most important topics in detail, and thereby indicate to my hearers how the subjects appertaining to our great argument ought to be studied? I decided in favor of the latter. To learn how to study and to convey coherent and substantial knowledge, is more important than merely to transmit information. It has ever appeared to me that, in all public instruction, but especially in public instruction of young men, there ought to be four main objects before the eye of the teacher. He ought, as a matter of course, to transmit positive information,—the facts of his science; he ought to infuse and evoke knowledge, by which I understand that he ought to cause his hearers to perceive the connection of things, and to make their essential truth part and parcel of the minds and souls of the hearers, so that it buds forth within their hearts, as wisdom, directness and loftiness of purpose, and rectitude of conduct. The teacher ought, moreover, to lead the kindly hearer to the hill-tops of the border knowledge, and, like a guide into a new country, show the land that lies beyond and the avenues that lead to it, although he may not at the time go farther along with them; and, lastly, the public, as every other teacher, from the master of the primary school to the martyr-teacher of Athens, who taught even when dying, must kindle a love of knowledge, inflame the hearts of his hearers with a sacred zeal for critical truthfulness, a steadfast, an heroic devotion to that which is good and true, and impart to them an inmost delight in tracing the rills and swelling brooks of truth and right, which Providence has marked for the progress of our kind. What is teaching, if it be not the the transmission and the cultivation of truth? What is truth, if it include not what is right?

Have I succeeded according to this standard? My own conscientious zeal, which I have applied to this course, and your unflagging, pains-taking attention during this arduous course, tell me that we may hold up this standard and honestly say we have not met in vain. We have assembled in

this hall evening after evening, in fair and in inclement weather, at a period in our country's history when the news of the grave events happening before us struck our ears like the boom of beginning battles. Often and often have they made it one of the severest tasks of your teacher to concentrate his mind on the topic on which he was to lecture to you, and, when he appeared before you, to restrain his heart from overflowing. Was I not here before you, lecturing on Public Law, on State and Government, much like a man obliged to discourse on navigation, aboard a threatened craft, in foul weather, when the ghastly foam of breakers is espied, and the turmoil on the shoal is heard to the leeward? You, on the other hand, soon to be active citizens of that country which is so rudely threatened from within,—not by gallant and inspiriting enemies from without,—have steadily persevered, in the midst of the storms of passion blowing from afar, and perceiving, at times, the breath of depravity near at hand. I thank you for this perseverance. Let us all hope that our country will still remain our country; but if that be decreed which we do not like even to mention, remember that you, above all, are called upon to be the guardians of the country's rights and freedom; and let us meet, whenever we may meet again, like men with clean hands and clean hearts, that have not helped in their fair country's ruin, but on the contrary, have done all in their sphere to prevent that from which they avert their countenances with sickening horror.[1]

[1] A syllabus of the topics that remained to be discussed was given, but is omitted here as not of sufficient interest to the reader.

AN ADDRESS ON SECESSION.

In the year 1850, after the admission of California as a free State, secession was urged by a strong party in South Carolina; but when a convention was held in Charleston, it was found that the so-called co-operationists—that is to say, those who were in favor of secession, indeed, but only conjointly with other States—were in the majority. The Union-men of the State, desirous of doing, on their part, whatever might be in their power, to strengthen the Union feeling, resolved, in 1851, to celebrate, by a mass-meeting at Greenville, S. C., the Fourth of July, a day already then frequently spoken of with little respect. Many citizens were invited, either to be present or "to give their views in writing at length," should they be prevented from participating in the celebration. The author was among the invited guests; but, being on the point of leaving South Carolina for some months, he wrote the following address, which was read, and published in the papers of the day, from one of which he now copies it, having been requested to do so, and being aware that it touches on subjects connected with the Lectures.

Fellow-Citizens: This is the Fourth of July! There is a fragrance about the month of July, delightful and refreshing to every friend of freedom. It was on the sixth day of this month that Leonidas and his martyr band, faithful "*to the laws of their country*," even unto death, sacrificed themselves, not to obtain a victory—they knew that that was beyond their reach—but to do more—to leave to their state, and their country, and to every successive generation of patriots, to the end of time, the memory of men that could "obey the law," and prepare themselves for a certain death for their country as for a joyful wedding-feast. It was on the ninth day of this month, that the Swiss peasants dared to make a stand, at Sempach, against Austria—then, as now, the drag-chain to the chariot of advancing Europe—that memorable day when Arnold Winkelried, seeing that his companions hesitated before the firm rampart of lances leveled against them by the Austrian knights, cried out: "Friends, I'll make a lane for you! Think of my dearest wife and children?"—grasped, as he was a man of great strength, a whole bundle of the enemy's pikes, buried them in his breast, and made a breach, so that over him

and the knights whom he had dragged down with him, his brethren could enter the hostile ranks, and with them victory for Switzerland and liberty; and Arnold's carcass, mangled and trodden down, became the corner-stone of the Helvetic Republic. It was on the fourteenth day of this month that the French, awakened from a lethargy into which an infamous despotism had drugged them, stormed and conquered that castle of tyranny, the ominous keys of which Lafayette sent to our Washington, who sacredly kept them to the last day of his life, so that every visitor could see them, as the choicest present ever offered to him to whom we owe so much of our liberty and of the existence of our great commonwealth. And it was on this day that our forefathers signed that Independence which many of them sealed with their blood, and which the others, not permitted to die for their cause, soon after raised to a great historical reality, by the boldest conception—by engrafting, for the first time in the history of our kind, a representative and complete political organism on a confederacy of states, nicely adjusted, yet with an expansive and assimilative vitality.

These are solemn recollections. As the pious Christian recounts the sacrifices and the victories of his church with burning gratitude and renewed pledges to live worthy of them, so does the fervent patriot remember these deeds with rekindled affections, and resolutions not to prove unworthy of such examples and unmindful of so great an inheritance, but, on the contrary, to do whatever in him lies to transmit the talent he has received from his fathers, undiminished, and, if God permits, increased, to his successors.

Yet there are those in this country who daringly pretend to make light of the great boon received from our fathers—of this, by far the greatest act of our history—of that act by which we stand forth among the nations of the earth—the Union. There have been patriots as devoted as ours—there have been republics besides ours—there have been spreading nations like ours—there have been bold adventurers pressing on into distant regions before ours—there have been confederacies in antiquity and modern times besides ours,—but there has never been a Union of free States like ours, cemented by a united representation of the single States, and of the people at large, woven together into a true Government like ours; leaving separate what ought to be separated, and yet uniting the whole by a broadcast and equal representation, changing with the changing population, so that we cannot fall into a dire Peloponnesian war, in which Athens and Sparta struggle for the leadership,—that internecine war into which

all other confederacies have fallen, and in which they have buried themselves under their own ruins, unless they have slowly glided into submission to one Holland, or one Austria, or one Berne. Many federations, indeed, have had to bear the larger part of both the evils.

There are those who pretend to make light of the Union; there are those who wilfully shut their eyes to the many positive blessings she has bestowed upon us, and who seem to forget that the good which the Union, with her Supreme Court, or any other vast and lasting institution, bestows upon men, consists as much in preventing evils as in showering benefits into our laps. There are those who will not see or hear what is happening before our own eyes in other countries—in Germany, for instance—that living, yet bleeding, ailing, writhing, humbled commentator on Disunion. Ah! fellow-citizens, you can but fear, and justly fear, *that* of disunion which I *know*. With you, the evils of disunion are happily but matter of apprehension; with me, unhappily, matter of living knowledge. I am like a man who knows the plague, because he has been in the East, where he witnessed its ravages; you only know it from description—and easily may it be understood why I shudder when I hear persons speak of the plague with trifling flippancy, or courting the appalling distemper to come and make its pleasant home among us, as a sweet blessing which Providence has never yet vouchsafed to us.

There are those who seem to imagine that the Union might be broken up and a new confederacy be formed with the ease and precision with which the glazier breaks his brittle substance along the line which his tiny diamond has drawn—forgetting that no great institution, and, least of all, a country, has ever broken up or can break up in peace, and without a struggle commensurate to its own magnitude; and that when vehement passion dashes down a noble mirror, no one can hope to gather a dozen well-framed looking-glasses from the ground.

There are those even who think that the lines along which our Union will split, are ready-marked like the grooved lines in some soft substance, intended from the beginning to be broken into parts for ultimate use.

There are those who speak of the *remedy* of secession—a remedy, as amputation would be a remedy, indeed, to cure a troublesome corn, or as cutting one's throat would remedy a migraine.

There are those, even, it seems to me, who have first rashly conceived of secession as a remedy, and now adhere to it as the end and object to be attained, when they are shown that it would not cure the

evils complained of, but, on the contrary, would induce others, infinitely greater and infinitely more numerous. They fall into the common error of getting so deeply interested in the means, that the object for the obtaining of which the means was first selected is forgotten. But though the error be of daily occurrence, it is a fearful one in this case, because the consequence would be appalling. They almost remind us of those good people in Tuscany, who had contracted so great a fondness for St. Romualdus, that when the saint had concluded to remove from among them, they resolved, in a grave town-meeting, to slay their patron saint, so that they might have at least his bones, and worship them as sacred relics.

We have heard much of secession. It is still daily dinning in our ears. What is secession? Is it revolution, or is it a lawful remedy to which a state is permitted to resort in right of its own sovereignty? Many persons—and there are some of high authority in other matters among them—maintain that even though it might not be expedient in the present case, it cannot be denied that the right of seceding belongs to every state. I have given all the attention, and applied all the earnest study that I am capable of to this subject; and everything—our history, the framing of our Constitution, the correspondence of the framers, the conduct of our country, the actions of our States—all prove to my mind that such is not the case. It has been often asserted that the States are sovereign; and they would not be so could they not, among other things, withdraw from the Union whenever they think fit. This is purely begging the question. The question is what sovereignty is, and what, in particular, it means when the term is applied to our confederated States. No word is used in more different applications than this term sovereign; but in no sense, whatever width and breadth be given to it in this or in any other case, does it mean absolute and unlimitable power, if we speak of men. There is but one absolute ruler—one true sovereign. Unlimited power is not for men; and the legal sage, Sir Edward Coke, went so far as to declare, in the memorable debates on the petition of rights, that "sovereignty is no parliamentary word." This is not the place where so subtle and comprehensive a subject can be thoroughly discussed, but I may be permitted to touch upon a few points which may be examined here without inconvenience.

What is right for one State, must needs be right for all the others. As to South Carolina, we can just barely imagine the possibility of her secession, owing to her situation near the border of the sea. But what would she have said a few years ago, or what indeed would

she say now—I speak of South Carolina, less the secessionists—if a State of the interior, say Ohio, were to vindicate the presumed right of secession, and to declare that, being tired of a republican government, she prefers to establish a monarchy with some prince, imported, all dressed and legitimate, from that country where princes grow in abundance, and whence Greece, Belgium, and Portugal have been furnished with ready-made royalties—what would we say? We would simply say, this cannot be and must not be. In forming the Union we have each given up some attributes, to receive, in turn, advantages of the last importance; and we have in consequence so shaped and balanced all our systems that no member can withdraw without deranging and embarassing all, and ultimately destroying the whole.

But does not the Constitution say that every power not granted in that instrument shall be reserved for each State? Assuredly it does. But this very provision is founded upon the supposition of the existence of two powers, the General and the State Governments. The Constitution is intended to regulate the affairs between them; secession, however, annihilates one party—the General Government—so far as the seceding State is concerned. The supposition that the Constitution itself contains the tacit acknowledgment of the right of secession, would amount to an assumption that a principle of self-destruction had been infused by its own makers into the very instrument which constructs the Government. It would amount to much the same provision which was contained in the first democratic constitution of France, namely, that if government acts against the law, every citizen has the duty to take up arms against *it*. This was, indeed, declaring Jacobinical democracy tempered by revolution, as a writer has called Turkey a despotism tempered by regicide.

And can we imagine that men so sagacious, so far-seeing, on the one hand, and so thoroughly schooled by experience on the other, as the framers of our Constitution were, have just omitted, by some oversight, to speak on so important a point? One of the greatest jurists of Germany said to me at Frankfort, when the Constituent Parliament was there assembled, of which he was a member: "The more I study your Constitution, the more I am amazed at the wise forecast of its makers, and the manly forbearance which prevented them from entering into any unnecessary details, so easily embarrassing at a later period." They would not deserve this praise, or, in fact, our respect, had they been guilty of a neglect such as has been supposed. Can we, in our sober senses, imagine that they believed in the right of secession, when they did not even stipulate a

fixed time necessary to give notice of a contemplated secession,—knowing, as they did, quite as well as we do, that not even a common treaty of defense or offense—no, not even one of trade and amity—is ever entered into by independent powers, without stipulating the period which must elapse between informing the other parties of an intended withdrawal and the time when it actually can take place; and when they knew perfectly well that, unless such a provision is contained in treaties, all international law interprets them as perpetual;—when they knew that not even two merchants join in partnership without providing for the period necessary to give notice of an intended dissolution of the house? It seems to me preposterous to suppose it. The absence of all mention of secession must be explained on the same ground on which the omission of parricide in the first Roman penal laws was explained—no one thought of such a deed.

Those that so carefully drew up our Constitution cannot be blamed for not having thought of this extravagance, because it had never been dreamt of in any confederacy, ancient, medieval, or modern. Never has there existed an architect so presumptuous as to consider himself able to build an arch equal to its purpose and use, yet each stone of which should be so loose that it might be removed at any time, leaving a sort of abstract arch, fit to support abstractions only—as useful in reality as the famous knife without a blade, of which the handle was missing. Those that insist on the right of secession from the Union, must necessarily admit the correlative right of expulsion on the part of the Union. Are they prepared for this?

If the Constitution says nothing on secession; if it cannot be supposed to exist by implication; if we cannot deduce it from the idea of sovereignty, it may be worth our while to inquire into the common law of mankind on this subject. The common law in this case is history.

Now, I have taken the pains of examining all confederacies of which we have any knowledge. In none of the many Greek confederacies did the right of secession exist, so far as we can trace their fundamental principles. In some rare cases an unfaithful member may have been expulsed. But in the most important of all these confederacies, and in that which received the most complete organization, resembling, in many points, our own—in the Achæan League, there existed no right of secession, and this is proved by the following case:—When the Romans had obtained the supremacy over Hellas, and Greece was little more than a province of Rome, the Ætolians respectfully waited upon the Roman commissioner, Gallus,

to solicit permission to secede from the League. He sent them to the Senate, and the secessionists obtained at Rome the permission to withdraw—no "leading case," I suppose, for Americans. The Amphictyonic Council allowed of no secession. It was Pan-Hellenic, and never meant to be otherwise. The medieval leagues of the Lombard cities, of the Swabian cities, and of the Rhenish cities, permitted no spontaneous withdrawal; but the fortunes of the fiercest wars waged against them by the nobility, would occasionally wrench off a member and produce disruptions. The great Hanseatic League, which, by its powerful union of distant cities, became one of the most efficient agents in civilizing Europe, and which, as Mr. Huskisson stated in Parliament, carried trade and manufacture into England, knew nothing of secession until the year 1630, when the princes, greedy for the treasures of her cities, had decreed her destruction, and forced many members to secede. This is no leading case either.

The Swiss Confederacy, the Germanic Federation, knew and know nothing of secession; nor did the United States of the Netherlands—so much studied by some of our framers, and by Washington among them—admit the withdrawal of any single state.

All these confederacies consisted of a far looser web than ours; none had a federal government comparable to ours; yet they never contemplated such a right. And should we do so—we, with a firmer union, a better understanding of politics, a nobler consciousness of our mission as a nation, and greater blessings at stake? Should we, indeed, of all men that ever united into federations, treat our Government, by which we excel all other united governments, as a sort of political picnic to which the invited guest may go and carry his share of the viands or not, as he thinks fit, or the humor may move him? Are all the rights on the side of the States—that is, the individuals—and all the obligations, and obligations only, on the side of the confederacy—that is, the whole? This doctrine is the French theory of excessive individual right and personal sovereignty applied to states, and naught else.

I ask, will any one who desires secession for the sake of bringing about a Southern Confederacy, honestly aver that he would insist upon a provision in the new constitution securing the full right of secession whenever it may be desired by any member of the expected confederacy?

To secede, then, requires revolution. Revolution for what? To remedy certain evils. And how are they to be remedied? It is a

rule laid down among all the authorities of international law and ethics, that to be justified in going to war it is not sufficient that right be on our side. We must also have a fair prospect of success in our favor. This rule applies with far greater force to revolutions. The Jews who rose against Vespasian had all the right, I dare say, on their side; but their undertaking was not a warrantable one for all that. We, however—should we have sufficient right on our side for plunging into a revolution—for letting loose a civil war? Does the system against which we should rise contain within its own bosom no peaceful, lawful remedies?

We are often told that our forefathers plunged into a revolution, why should not we? Even if the two cases were comparable, which they are obviously not, I would ask on the other hand, Are we to have a revolution every fifty years? Give me the Muscovite Czar rather than live under such a government, if government it could be called. I am a good swimmer, but I should not like to spend my life in whirlpools. And does the question of right or wrong, of truth and justice, go for nothing in revolutions?

Nor would the probability of success be in our favor, since it is certain that secession cannot take place without war, and this war must end in one or the other of two ways. It must either kindle a general conflagration, or we must suffer, single-handed, the consequences of our rashness—bitter if we succeed in lopping ourselves off from the trunk, bitter if we cannot succeed. Unsuccessful revolutions are not only misfortunes, they become stigmas. And what if the conflagration becomes general? Let us remember that it is a rule which pervades all history, because it pervades every house, that the enmity of contending parties is implacable and venomous in the same degree as they have previously stood near each other, or as nature intended the relation of good will to exist between them. It is the secret of all civil and religious wars: it is the secret of divided families: it is the explanation of unrelenting hatred between those who once were bosom friends. Our war would be the repetition of the Peloponnesian War, or of the German Thirty Years' War, with still greater bitterness between the enemies, because it would be far more unnatural. It would shed the dismal glare of barbarism on the nineteenth century. Have they that long for separation forgotten that England, at first behind Germany, France, Italy, and Spain, rapidly outstripped all, because earlier united, without permitting the crown to absorb the people's rights? The separation of the South from the North would speedily produce a manifold disrupture, and bring us

back to a heptarchy, which was no government of seven, but a state of things where many worried all. If there be a book which I would recommend, before all others, to read at this juncture, that book is Thucydides. It reads as if it had been written to make *us* pause; as if the orators introduced there had spoken expressly for our benefit; as if the fallacies of our days had all been used and exposed at that early time; and as if in that book a very mirror were held up for our admonition. Or we may peruse the history of cumbered, ailing Germany, deprived of unity, dignity, strength, wealth, peace, and liberty, because her unfortunate princes have pursued, with never-ceasing eagerness, what is called in that country *particularism*—that is, hostility of the parts to the whole of Germany, and after the down-fall of Napoleon preferred the salvation of their petty sovereignties, conferred upon them by Napoleon, to the grandeur, peace, and strength of their common country. The history of Germany, the battle-field of Europe for these three centuries, will tell you what idol we should worship, were we to toss our blessings to the winds, and were we to deprive mankind of the proud example inviting to imitation.

I have already gone far beyond the proper limits of a communication for the purpose for which the present one is intended, and must abruptly conclude where so much may yet be said.

I will only add that I, for one, dare not do anything toward the disruption of the Union. Situated, as we are, between Europe and Asia, on a fresh continent, I see the finger of God in it. I believe our destiny to be a high, a great, and a solemn one, before which the discussions now agitating us shrink into much smaller dimensions than they appear if we pay exclusive attention to them. I have come to this country, and pledged a voluntary oath to be faithful to it, and I will keep this oath. This is my country from the choice of manhood, and not by the chance of birth. In my position, as a servant of the State, in a public institution of education, I have imposed upon myself the duty of using my influence with the young neither one way nor the other in this discussion. I have scrupulously and conscientiously adhered to it in all my teaching and intercourse. There is not a man or a youth that can gainsay this. But I am a man and a citizen, and as such I have a right, or the duty, as the case may be, to speak my mind and my inmost convictions on solemn occasions before my fellow-citizens, and I have thus not hesitated to put down these remarks. Take them, gentlemen, for what they may be worth. They are, at any rate, sincere and fervent; and, whatever judgment

others may pass upon them, or whatever attacks may be leveled against them, no one will be able to say that they can have been made to promote any individual advantages. God save the commonwealth! God save the common land!

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